

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 4 1999

DOCKET FILE COPY ORIGINAL

OFFICE OF
MANAGING DIRECTOR

86285

Mr. Felix A. Bonnet Alvarez
Senior Vice President
Primedia Broadcast Group, Inc.
P.O. Box 949
Guaynabo, PR 00970-0949

Re: Petitions for Reduction of Regulatory Fees

Dear Mr. Alvarez:

This is in response to your requests for a deferment and reduction of the Fiscal Year (FY) 1997 regulatory fees for Puerto Rican FM Radio Stations WOYE, WIOB, WOQI, WCTA, WIOC, WCOM, WIOA and WZNT. Please excuse our failure to respond to your requests in a more timely manner.

You argue that because of Puerto Rico's small area, mountainous terrain and rural population, the Commission has waived its rules to permit stations to operate with greater power and higher antenna than would otherwise be allowed. As a result, you contend that each station is credited for fee purposes with a larger theoretical area of coverage than it actually serves, and a larger but unreachable population base, resulting in a disproportionate increase in its fee obligations. You further argue that the Puerto Rican population is not mobile, that each station serves its community of license, and while a station's signal may extend into other communities, that does not mean the station serves those communities. Finally, you argue that because of the depressed nature of the Puerto Rican economy, payment of the full fee will cause a severe financial strain and affect each station's ability to serve the public. You urge the Commission to reduce the fee for each station to no more than a 38% increase over the FY 1996 fees, the amount of the increase attributable to the broadcast radio industry.

In order to determine the population attributable to each station for fee purposes, we calculated the station's field strength contours, considering all factors such as mountainous terrain which may reduce coverage. The calculated field strength signal contour was then overlaid on U.S. Census data to obtain an estimate of population coverage for each station. Thus, the fee schedule accurately reflects the population within each station's protected contour.

In FY 1996, the Mass Media Radio Regulatory Fees were predicated solely on the class of station irrespective of the size of the population served by each station. The FY 1997 fee schedule

sought to eliminate the inequities in the 1996 fee schedule by predicating the fees on both the class of station and the size of the population served. As a result, not all stations experienced the same increase in fees and there is no basis for selectively reducing the fees for some licensees to no more than 38% of the regulatory fees they paid in 1996.

We recognize that by relying on protected daytime contours for FY 1997, some stations were credited with serving populations not considered to be within their "core" service areas. However, the FY 1997 regulatory fees for all AM stations were derived by calculating the populations within the 0.5 mV/m contour of each individual station, which is their daytime protected service contour. The 0.5 mV/m contour extends beyond and includes populations not within a licensee's primary service area. Therefore, as a matter of equity, recalculating a station's service area using a different contour for measuring population would require recalculating the service areas, populations, and fees, at a minimum, for all radio broadcast stations, in order to insure the Commission's ability to collect the required amount in fees and that licensees are treated equally.

We also recognize that some broadcasters believe that the city grade contour which each licensee is required to place over its community of license may be a better reflection of the "core" population served by that station. Each of Primedia's stations for example, has complained that it is attributed with service to populations from other communities which it does not serve. We therefore, decided to use the city grade contour to calculate FY 1998 radio regulatory fees. However, the 0.5 mV/m contour is appropriate for calculating the FY 1997 regulatory fees because that contour represents the area in which listeners receive the station's protected signal. Thus, the Commission will not reduce, on an ad hoc basis, an individual station's regulatory fee solely because its population served would be lower had we relied on a different service contour.

We further note that you argue that the regulatory fees will cause each licensee a financial hardship, and could affect their ability to serve the public. In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial need by submitting:

Mr. Felix A. Bonnet Alvarez

3.

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-2762.

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

In the absence of appropriate documentation, each station failed to establish a compelling case of financial hardship and the requests for reduction of the FY 97 regulatory fees are dismissed. However, in view of the allegations of financial hardship, each station may refile its request reduction or waiver of the fee payment with appropriate supporting documentation, within 30 days from the date of this letter.

If you have any questions concerning the regulatory fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Keger
Chief Financial Officer

Jenny
RECEIVED
SEP 21 3 41 PM '98
September 9, 1998

Federal Communication Commission

Office of the Managing Director
1919 M. Street, N.W., Room 450
Washington, DC 20554

**RE: REGULATORY FEE REDUCTION REQUEST
FOR WOYE, INC. (WOYE-FM)**

Sirs:

On behalf of WOYE, INC. licensee of WOYE-FM, Mayagüez, Puerto Rico, we confirm that we sent our regulatory fees payment including FCC Form 159 to the FCC regulatory fees address in Pittsburgh.

We wish to reassert our petition for a reduction of the regulatory fees as stated in the document enclosed with our 1997 regulatory fee payment (photocopy enclosed).

As of today our petition is still pending.

Cordially,

PRIMEDIA BROADCAST GROUP, INC.


FELIX A. BONNET ALVAREZ
Senior Vice-President

FAB/pr

C: Mrs. Hilary Hatler
Mrs. Marissa Repp
Mr. Joe Pagán

In the Matter of)
)
Petition for Deferment)
of Payment)
)
)
WOYE, INC.)

TO: The Commission

**PETITION FOR DEFERMENT OF
PAYMENT OF REGULATORY FEE INCREASE**

WOYE, INC. ("Licensee"), licensee of WOYE-FM, Mayagüez, PR,
(the "Station"), pursuant to Section 1.1166 of the Federal Communications Commission's Rules,
hereby petitions for a deferment of the payment of part of the regulatory fee increase applicable
to this Station. A petition is being filed simultaneously herewith requesting a ruling declaring
Licensee to be exempt from payment of the regulatory fee increase over and above a 38%
increase on the basis that any additional increase is due to the FCC's new fee methodology,
which when applied to the Station results in a disproportionate and inequitable fee requirement.
In support of this request, the following is submitted.

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees
for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997).
With respect to Licensee, the regulatory fees contained therein represented a substantial increase
in the fees due for the Station as compared to previous years.

2. Part of the regulatory fee increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. The remainder of the fee increase is due to the Commission's new methodology of calculating annual regulatory fees for AM and FM Stations.

3. Licensee is willing to pay the amount of last year's annual regulatory fee and an additional 38% of that amount. However, because the increase over and above 38% is based on the FCC's fees determination methodology, which results in a disproportionate fee increase when applied to Licensee, it is seeking a reduction of any increase over and above the 38%.

4. Requiring Licensee to pay the fees currently due would be unfair, inequitable and contrary to the Commission's intent in establishing the new fee methodology, which was designed to more accurately associate population density and service area contours with license data. Here, the Station is obligated to pay a disproportionate share of the regulatory fee increase because such increase is tied to the Station's population base, which is artificially inflated due to the influences of geography and certain technical standards utilized by the Station pursuant to FCC rules and regulations. Additionally, because the fee increase is so substantial in comparison with previous years and because the economy of Puerto Rico is generally depressed, requiring Licensee to pay the full amount of the fee increase will cause Licensee to suffer significant financial strain and will severely limit its ability to serve the public.

Accordingly, pending the outcome of Licensee's Petition for Declaratory Ruling, Licensee requests deferment of the payment of the portion of the regulatory fee increase over and above the 38% mandated by Congress.

Respectfully submitted,



FELIX A. BONNET ALVAREZ
Senior Vice-President

Dated: September 15, 1997

In the Matter of)
)
Petition for Declaratory)
Ruling)
)

WOYE, INC.)

TO: The Commission

**PETITION FOR DECLARATORY RULING AND FOR
WAIVER OF REGULATORY FEE INCREASE**

WOYE, INC. ("Licensee"), pursuant to Section 1.2 of the Federal Communications Commission's Rules, hereby petitions for a ruling declaring that its exempt, in part, from payment of the regulatory fee increase applicable to its radio station. This submission is accompanied by a Petition for Reduction of Payment of Regulatory Fee Increase.

I. Introduction

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997) ("FY 1997 Fee Order"). The regulatory fees contained therein represented a substantial increase in the fees due for these stations in previous years. Part of that increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. Accordingly, the Licensee is submitting

herewith the amount of last year's annual regulatory fee and an additional 38% of that amount. The remainder of the fee increase is due to the FCC's new methodology of calculating annual regulatory fees for AM and FM Stations. Licensee is willing to pay the amount submitted herewith, and seeks only a reduction of any increase over and above the 38%, as such increase is based on the FCC's fees determination methodology. In support of this request, the following is submitted.

II. Argument

2. Section 9(d) of the Communications Act of 1934, as amended, provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d); see also 47 C.F.R. § 1.1166 (1995). Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction. 47 C.F.R. § 1.1166(d) (1995).

3. In its FY 1997 Fee Order, the FCC instituted a new fee structure for assessment of AM and FM broadcast fees for FY 1997. The Commission's objective in doing so was to more accurately "associate population density and service area contours with license data." FY 1997 Fee Order, at page 19. By basing fees on class of station and population served, the FCC hoped to provide "a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas." Id. at 23. The expected result is that generally larger stations and those located in larger metropolitan areas will be more likely to be assessed higher fees and small stations and those located in rural areas will be more likely to be assessed lower fees. Id. While Licensee does not challenge the Commission's contention that generally these objectives have been realized due to its implementation of the new methodology, it is noted that proportionately, with respect to the fee increase, small rural stations on the island of Puerto Rico,

including the Station at issue here, are bearing a significantly greater share of the increase than the large metropolitan stations.

4. The disproportionate fee increase appears to be the combined result of several factors unique to Puerto Rico, not just one specific circumstance. As is more fully described below, these factors include the Island's unusual geographical characteristics, its dense but predominately rural population, the implementation of certain technical standards, which although in compliance with Commission requirements, are at variance with similarly situated stations located in the 48 contiguous states, and the inherent localism of the stations.

5. First, a number of factors particular to an island location converge to result in disproportionate fees for small stations in Puerto Rico. Geographically, Puerto Rico is small and its terrain is quite rugged. Puerto Rico is approximately 90 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks broadcast signals directed across its heights. Isolated high points also exist throughout the island which make it difficult to sustain a good quality broadcast signal even at shorter distances.

6. Recognizing the inherent difficulties these geographical considerations pose to coverage and the need to enhance the abilities of the Puerto Rico stations to better serve the needs of their audiences, the FCC has authorized, through waivers and/or specific rules and regulations, the use of more powerful transmitters and/or larger antennas than would otherwise be permitted.^{1/} Additionally, the FCC has adopted special short spacing rules for Puerto Rico

^{1/} For example, Class A stations in Puerto Rico are authorized a maximum ERP of 6kW and a reference HAAT of 240 m. While Class A stations in the 48 contiguous states are authorized the same maximum ERP, the maximum authorized reference HAAT is only 100 m. The same comparison applies to Class B1 and Class B stations. While the maximum allowable ERP is the same, Puerto Rico stations have been authorized a greater reference HAAT. See 47 C.F.R. § 73.211.

stations, which permit the construction of a greater number of stations in a smaller area than would be the case on the mainland. See 47 C.F.R. § 73.215. Taken together, these specialized technical rules artificially inflate the annual regulatory fees due for these stations under the FCC's new fee methodology.

7. While admittedly the variances mentioned above are necessary to Puerto Rican radio operations, their impact with respect to the regulatory fee obligations of small rural stations in Puerto Rico, including the Station at issue here, is profound. First, the short spacing rules create significant congestion in the radio market, particularly in the rural areas. Consequently, there is more contour overlap and thus more contour interference. The effects of this congestion are further magnified by the fact that 90% of the radio stations on the Island are located along the coastline. The implication being that some portion of these stations' signals are transmitting over the ocean. Finally, even though the terrain, contour overlap and interference generally preclude the Station from transmitting a signal of any quality beyond its community of license, the expanded facilities requirements (i.e., ERP and HAAT variances) produce a greater maximum theoretical class contour distance for the Station.^{2/} Thus, because the new fee methodology is tied to both the class of the station and the population being served, and because the Station has a larger theoretical area of coverage and therefore a seemingly larger population base, albeit a technically unreachable population base, the Station has seen a disproportionate increase in its fee obligations.

^{2/} This is best illustrated by comparing the maximum limits for Puerto Rico FM stations to those of the same class in the 48 contiguous states. The maximum contour distances for FM stations in Puerto Rico is as follows: 42 k for Class A stations, 46 k for Class B1 stations, and 78 k for Class B stations. In contrast, the maximum contour distances for the same class of stations on the mainland is: 28 k for Class A stations, 39 k for Class B1 stations, and 52 k for Class B stations.

8. Moreover, although Puerto Rico is rather small, it has a strong radio presence.

Roughly 120 licensed or authorized radio stations exist on the island, the majority of which are small, privately owned stations who serve rural communities. Puerto Rico is also densely populated. Approximately the size of the State of Connecticut, it is home to a total 1990 Census population of 3,522,037 persons. These people, however, are not highly mobile like the residents of Connecticut who commute daily to New York to work. Rather, all of the daily activities of the residents of Puerto Rico occur within their own or neighboring communities, which are considered as distinct as the cities of Washington, New York and Boston. This localization is further evidenced by the findings of the U.S. Census Bureau, which has divided the Island into four Metropolitan Statistical Areas ("MSAs"),^{2/} and by the Commission, who has utilized such MSAs when considering waivers of the one-to-a-market multiple ownership rule to help define applicable broadcast markets in Puerto Rico. See WLDI, Inc. (Assignor) and Pedro Roman Collazo (Assignee) for Assignment of License of Station WRAI(AM), San Juan, Puerto Rico, 1 CR 862, 10 FCC Rcd 12150 (September 28, 1995).

9. The existence of these alternative MSAs demonstrates that population, commuting, and business patterns are fractured. Thus, the mere fact that a station's signal from one market might spill into the population center of another's doesn't mean people there will be listeners, or more importantly, that advertisers will buy time on the station. This impact is even greater on the rural stations which have populated areas but are not considered stations in the

^{2/} An MSA comprises one or more counties containing either a place with at least 50,000 inhabitants or an urbanized area and a Metropolitan Area (MA) total population of at least 100,000. Contiguous counties are included if they have close social and economic links with the area's population nucleus.

populated area by listeners or advertisers.^{4/}

10. Given the Commission's intent to treat Puerto Rico specially, as evidenced by these different technical rules and standards, and given its intent to more accurately associate the regulatory fee assessment with population density and the fact that a completely opposite result is reached when this methodology is applied to the Station because of the artificial factors which inflate the Station's population base, it would be unfair and inequitable to require Licensee to pay the full amount of the fees currently due. Moreover, because of the generally more depressed nature of the Puerto Rico economy, increases such as these confer a disproportionately greater burden on Puerto Rico licensees. In this instance, the increase will cause the Licensee to suffer severe financial strain and limit its ability to serve the public.

11. As indicated above, the Commission has the authority to reduce or defer the regulatory fee requirement in instances where reduction or deferral would promote the public interest. See 47 C.F.R. § 1.1166 (1997). For the reasons noted above, the Commission should exercise this discretion in the case of Licensee.

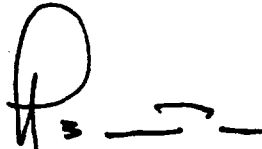
III. Conclusion

Licensee has demonstrated that as a result of the artificial factors influencing the Station's area of coverage and population base, application of the current fee schedule and imposition of a regulatory fee increase over and above the amount mandated by Congress would result in a grossly unfair burden. In order for Licensee to continue its operations and meet the needs of its listeners, Licensee respectfully requests that the Commission exercise its authority in this case

^{4/} Because stations are strongly tied to their community of license, most if not all of a station's advertising dollars come from local advertisers. These advertisers service only local consumers and therefore do not generally purchase advertising outside the community of license.

and exempt Licensee from the regulatory fee increase requirement, over and above the 38% increase mandated by Congress.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'F. Bonnet Alvarez', written over a horizontal line.

FELIX A. BONNET ALVAREZ
Senior Vice-President

Dated: September 15, 1997

Payment Transactions Detail Report

Date: 10/20/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9709238835203006	WOYE INC PO BOX 1718	0660519737	09/19/97

MAYAGUEZ PR 00681

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$2,240.00	\$2,240.00	2	MSF7	1	BLFT830825	WOYE INC	006811718		\$220.00	1	PMT
\$2,240.00	\$2,240.00	4	MUB7	1	KY7776	WOYE INC	006811718		\$25.00	1	PMT
\$2,240.00	\$2,240.00	6	MSF7	1	W276AI	WOYE INC	006811718		\$220.00	1	PMT
\$2,240.00	\$2,240.00	3	MUB7	1	WCD959	WOYE INC	006811718		\$25.00	1	PMT
\$2,240.00	\$2,240.00	1	MGA7	1	WOYEFM	WOYE INC	006811718		\$1,725.00	1	PMT
\$2,240.00	\$2,240.00	5	MUB7	1	WPNA849	WOYE INC	006811718		\$25.00	1	PMT
Total	6								\$2,240.00		

Jecky

9709238835310005

PRIMEDIA
BROADCAST GROUP

September 9, 1998

Federal Communication Commission

Office of the Managing Director
1919 M. Street, N.W., Room 450
Washington, DC 20554

**RE: REGULATORY FEE REDUCTION REQUEST
FOR WLDI, INC. (WCOM-FM)**

Sirs:

On behalf of WLDI, INC. licensee of WCOM-FM, Mayagüez, Puerto Rico, we confirm that we sent our regulatory fees payment including FCC Form 159 to the FCC regulatory fees address in Pittsburgh.

We wish to reassert our petition for a reduction of the regulatory fees as stated in the document enclosed with our 1997 regulatory fee payment (photocopy enclosed).

As of today our petition is still pending.

Cordially,

PRIMEDIA BROADCAST GROUP, INC.


FELIX A. BONNET ALVAREZ
Senior Vice-President

FAB/pr

C: Mrs. Hilary Hatler
Mrs. Marissa Repp
Mr. Joe Pagán

REC
SEP 21 5 30
FCC
FEE REDUCTION

In the Matter of)
)
Petition for Deferment)
of Payment)
)
)
)
WLDI, INC.)

TO: The Commission

**PETITION FOR DEFERMENT OF
PAYMENT OF REGULATORY FEE INCREASE**

WLDI, INC. ("Licensee"), licensee of WCOM-FM, Bayamón, P.R.,
(the "Station"), pursuant to Section 1.1166 of the Federal Communications Commission's Rules,
hereby petitions for a deferment of the payment of part of the regulatory fee increase applicable
to this Station. A petition is being filed simultaneously herewith requesting a ruling declaring
Licensee to be exempt from payment of the regulatory fee increase over and above a 38%
increase on the basis that any additional increase is due to the FCC's new fee methodology,
which when applied to the Station results in a disproportionate and inequitable fee requirement.
In support of this request, the following is submitted.

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees
for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997).
With respect to Licensee, the regulatory fees contained therein represented a substantial increase
in the fees due for the Station as compared to previous years.

2. Part of the regulatory fee increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. The remainder of the fee increase is due to the Commission's new methodology of calculating annual regulatory fees for AM and FM Stations.

3. Licensee is willing to pay the amount of last year's annual regulatory fee and an additional 38% of that amount. However, because the increase over and above 38% is based on the FCC's fees determination methodology, which results in a disproportionate fee increase when applied to Licensee, it is seeking a reduction of any increase over and above the 38%.

4. Requiring Licensee to pay the fees currently due would be unfair, inequitable and contrary to the Commission's intent in establishing the new fee methodology, which was designed to more accurately associate population density and service area contours with license data. Here, the Station is obligated to pay a disproportionate share of the regulatory fee increase because such increase is tied to the Station's population base, which is artificially inflated due to the influences of geography and certain technical standards utilized by the Station pursuant to FCC rules and regulations. Additionally, because the fee increase is so substantial in comparison with previous years and because the economy of Puerto Rico is generally depressed, requiring Licensee to pay the full amount of the fee increase will cause Licensee to suffer significant financial strain and will severely limit its ability to serve the public.

Accordingly, pending the outcome of Licensee's Petition for Declaratory Ruling, Licensee requests deferment of the payment of the portion of the regulatory fee increase over and above the 38% mandated by Congress.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'F. Bonnet Alvarez', written over a horizontal line.

FELIX A. BONNET ALVAREZ
Senior Vice-President

Dated: September 15, 1997

In the Matter of)
)
Petition for Declaratory)
Ruling)
)
)
WLDI, INC.)

TO: The Commission

**PETITION FOR DECLARATORY RULING AND FOR
WAIVER OF REGULATORY FEE INCREASE**

WLDI, INC. ("Licensee"), pursuant to Section 1.2 of the Federal Communications Commission's Rules, hereby petitions for a ruling declaring that its exempt, in part, from payment of the regulatory fee increase applicable to its radio station. This submission is accompanied by a Petition for Reduction of Payment of Regulatory Fee Increase.

I. Introduction

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997) ("FY 1997 Fee Order"). The regulatory fees contained therein represented a substantial increase in the fees due for these stations in previous years. Part of that increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. Accordingly, the Licensee is submitting

herewith the amount of last year's annual regulatory fee and an additional 38% of that amount. The remainder of the fee increase is due to the FCC's new methodology of calculating annual regulatory fees for AM and FM Stations. Licensee is willing to pay the amount submitted herewith, and seeks only a reduction of any increase over and above the 38%, as such increase is based on the FCC's fees determination methodology. In support of this request, the following is submitted.

II. Argument

2. Section 9(d) of the Communications Act of 1934, as amended, provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d); see also 47 C.F.R. § 1.1166 (1995). Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction. 47 C.F.R. § 1.1166(d) (1995).

3. In its FY 1997 Fee Order, the FCC instituted a new fee structure for assessment of AM and FM broadcast fees for FY 1997. The Commission's objective in doing so was to more accurately "associate population density and service area contours with license data." FY 1997 Fee Order, at page 19. By basing fees on class of station and population served, the FCC hoped to provide "a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas." Id. at 23. The expected result is that generally larger stations and those located in larger metropolitan areas will be more likely to be assessed higher fees and small stations and those located in rural areas will be more likely to be assessed lower fees. Id. While Licensee does not challenge the Commission's contention that generally these objectives have been realized due to its implementation of the new methodology, it is noted that proportionately, with respect to the fee increase, small rural stations on the island of Puerto Rico,

including the Station at issue here, are bearing a significantly greater share of the increase than the large metropolitan stations.

4. The disproportionate fee increase appears to be the combined result of several factors unique to Puerto Rico, not just one specific circumstance. As is more fully described below, these factors include the Island's unusual geographical characteristics, its dense but predominately rural population, the implementation of certain technical standards, which although in compliance with Commission requirements, are at variance with similarly situated stations located in the 48 contiguous states, and the inherent localism of the stations.

5. First, a number of factors particular to an island location converge to result in disproportionate fees for small stations in Puerto Rico. Geographically, Puerto Rico is small and its terrain is quite rugged. Puerto Rico is approximately 90 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks broadcast signals directed across its heights. Isolated high points also exist throughout the island which make it difficult to sustain a good quality broadcast signal even at shorter distances.

6. Recognizing the inherent difficulties these geographical considerations pose to coverage and the need to enhance the abilities of the Puerto Rico stations to better serve the needs of their audiences, the FCC has authorized, through waivers and/or specific rules and regulations, the use of more powerful transmitters and/or larger antennas than would otherwise be permitted.^{1/} Additionally, the FCC has adopted special short spacing rules for Puerto Rico

^{1/} For example, Class A stations in Puerto Rico are authorized a maximum ERP of 6kW and a reference HAAT of 240 m. While Class A stations in the 48 contiguous states are authorized the same maximum ERP, the maximum authorized reference HAAT is only 100 m. The same comparison applies to Class B1 and Class B stations. While the maximum allowable ERP is the same, Puerto Rico stations have been authorized a greater reference HAAT. See 47 C.F.R. § 73.211.

stations, which permit the construction of a greater number of stations in a smaller area than would be the case on the mainland. See 47 C.F.R. § 73.215. Taken together, these specialized technical rules artificially inflate the annual regulatory fees due for these stations under the FCC's new fee methodology.

7. While admittedly the variances mentioned above are necessary to Puerto Rican radio operations, their impact with respect to the regulatory fee obligations of small rural stations in Puerto Rico, including the Station at issue here, is profound. First, the short spacing rules create significant congestion in the radio market, particularly in the rural areas. Consequently, there is more contour overlap and thus more contour interference. The effects of this congestion are further magnified by the fact that 90% of the radio stations on the Island are located along the coastline. The implication being that some portion of these stations' signals are transmitting over the ocean. Finally, even though the terrain, contour overlap and interference generally preclude the Station from transmitting a signal of any quality beyond its community of license, the expanded facilities requirements (i.e., ERP and HAAT variances) produce a greater maximum theoretical class contour distance for the Station.^{2/} Thus, because the new fee methodology is tied to both the class of the station and the population being served, and because the Station has a larger theoretical area of coverage and therefore a seemingly larger population base, albeit a technically unreachable population base, the Station has seen a disproportionate increase in its fee obligations.

^{2/} This is best illustrated by comparing the maximum limits for Puerto Rico FM stations to those of the same class in the 48 contiguous states. The maximum contour distances for FM stations in Puerto Rico is as follows: 42 k for Class A stations, 46 k for Class B1 stations, and 78 k for Class B stations. In contrast, the maximum contour distances for the same class of stations on the mainland is: 28 k for Class A stations, 39 k for Class B1 stations, and 52 k for Class B stations.

8. Moreover, although Puerto Rico is rather small, it has a strong radio presence. Roughly 120 licensed or authorized radio stations exist on the island, the majority of which are small, privately owned stations who serve rural communities. Puerto Rico is also densely populated. Approximately the size of the State of Connecticut, it is home to a total 1990 Census population of 3,522,037 persons. These people, however, are not highly mobile like the residents of Connecticut who commute daily to New York to work. Rather, all of the daily activities of the residents of Puerto Rico occur within their own or neighboring communities, which are considered as distinct as the cities of Washington, New York and Boston. This localization is further evidenced by the findings of the U.S. Census Bureau, which has divided the Island into four Metropolitan Statistical Areas ("MSAs"),^{2/} and by the Commission, who has utilized such MSAs when considering waivers of the one-to-a-market multiple ownership rule to help define applicable broadcast markets in Puerto Rico. See WLDI, Inc. (Assignor) and Pedro Roman Collazo (Assignee) for Assignment of License of Station WRAI(AM), San Juan, Puerto Rico, 1 CR 862, 10 FCC Rcd 12150 (September 28, 1995).

9. The existence of these alternative MSAs demonstrates that population, commuting, and business patterns are fractured. Thus, the mere fact that a station's signal from one market might spill into the population center of another's doesn't mean people there will be listeners, or more importantly, that advertisers will buy time on the station. This impact is even greater on the rural stations which have populated areas but are not considered stations in the

^{2/} An MSA comprises one or more counties containing either a place with at least 50,000 inhabitants or an urbanized area and a Metropolitan Area (MA) total population of at least 100,000. Contiguous counties are included if they have close social and economic links with the area's population nucleus.

populated area by listeners or advertisers.^{4/}

10. Given the Commission's intent to treat Puerto Rico specially, as evidenced by these different technical rules and standards, and given its intent to more accurately associate the regulatory fee assessment with population density and the fact that a completely opposite result is reached when this methodology is applied to the Station because of the artificial factors which inflate the Station's population base, it would be unfair and inequitable to require Licensee to pay the full amount of the fees currently due. Moreover, because of the generally more depressed nature of the Puerto Rico economy, increases such as these confer a disproportionately greater burden on Puerto Rico licensees. In this instance, the increase will cause the Licensee to suffer severe financial strain and limit its ability to serve the public.

11. As indicated above, the Commission has the authority to reduce or defer the regulatory fee requirement in instances where reduction or deferral would promote the public interest. See 47 C.F.R. § 1.1166 (1997). For the reasons noted above, the Commission should exercise this discretion in the case of Licensee.

III. Conclusion

Licensee has demonstrated that as a result of the artificial factors influencing the Station's area of coverage and population base, application of the current fee schedule and imposition of a regulatory fee increase over and above the amount mandated by Congress would result in a grossly unfair burden. In order for Licensee to continue its operations and meet the needs of its listeners, Licensee respectfully requests that the Commission exercise its authority in this case

^{4/} Because stations are strongly tied to their community of license, most if not all of a station's advertising dollars come from local advertisers. These advertisers service only local consumers and therefore do not generally purchase advertising outside the community of license.